

Earning Limitations for Service Retirees



NYC EMPLOYEES'
RETIREMENT SYSTEM

All Tiers

May 2023

Service retirees who are returning to public service within New York City or New York State may be subject to earnings limitations. In general, Sections 211 and 212 of the New York State Retirement and Social Security Law (RSSL) govern re-employment by service retirees and earnings limitations based on various factors such as the source of income (public, private, or public benefit corporation), a retiree's age, and the issuance of a waiver (RSSL §211 only).

New York State Retirement and Social Security Law §211

This section covers service retirees hired for "hard-to-fill" positions. To be covered under RSSL §211, your prospective employer must obtain a waiver, known as a 211 Waiver, from an authorized agency. The Department of Citywide Administrative Services issues 211 Waivers for most City agencies. Service retirees must submit a copy of the 211 Waiver to NYCERS. The amount you may earn while employed by your former employer* without loss, suspension or reduction of your retirement allowance is the difference between:

1. The maximum pension portion of your retirement allowance (plus cost-of-living adjustments); and
2. The salary on which your retirement allowance was based or the maximum salary you currently would be receiving in the position from which you last retired if you had not retired, whichever is greater.

* Under Section 211, there are no earnings limitations for retirees who are hired by a different employer. **Note:** The City of New York is considered a single employer. Therefore, if you retired from one City agency and are considering working for a different City agency, it is generally considered the same employer under RSSL Section 211. For a list of NYCERS participating employers, visit www.nycers.org/glossary#pe.

New York State Retirement and Social Security Law §212

Under RSSL §212, if you are under age 65 and return to public service or are elected or appointed to any public office within New York City or New York State, you are subject to earnings limitations. In the year 2020 and thereafter, the amount you may earn without loss, suspension or reduction of your retirement allowance is \$35,000 (subject to change by an act of the NYS Legislature). If your earnings exceed \$35,000 in a calendar year, your pension will be suspended for the remainder of that calendar year.

There are no earnings limitations starting in the calendar year in which you turn 65 OR if you work for:

- The private sector
- The Federal government
- A public agency in another state or municipality outside of New York State
- A public agency in New York City or New York State, but only if you retired from the NYC Transit Authority
- A public school in New York City or New York State**

There are no earnings limitations if you return to work at a public benefit corporation (such as NYC Health + Hospitals and the NYC Transit Authority, etc.). However, each agency has its own policy about re-employing service retirees so you should contact the agency directly for more information. For a full list of public benefit corporations, visit NYCERS' website at www.nycers.org/glossary#pbc.

You must file Form #353 with NYCERS electing to have the provisions of RSSL §212 apply. If you do not file Form #353, you are subject to an earnings limitation of no more than \$1,800 per year, including any pension earned. You only need to file Form #353 once to be covered by the provisions of RSSL §212. If you are returning to public service within New York City or New York State in the calendar year in which you turn 65, or after, you must file Form #353 even though you are not subject to earnings limitations.

Pursuant to Civil Service Law §150, if an elected official retires and accepts appointment, is re-elected, or takes a new oath of office to the same elective public office from which they retired, they are subject to the earnings limitations in RSSL §212 – even if they are over age 65 or have filed Form #353.

Membership in a New York City or New York State Public Retirement System

If you return to City service in a NYCERS-eligible position, you have 90 days from the date of appointment to rejoin NYCERS if you wish to become a member again. If you do not rejoin NYCERS within the 90-day period, you will not be eligible to rejoin for the entire period of your post-retirement employment, and you will not receive credit for any service rendered after returning.

If you are covered by RSSL §§211 or 212 and join a New York State or New York City public retirement system other than NYCERS, the pension portion of your retirement allowance is suspended for the entire period of your membership. Various laws and NYCERS' rules govern post-retirement earnings limitations for disability retirees. This brochure details such limitations. Please refer to the section of this brochure applicable to your tier.

****Chapter 56 of the Laws of 2022 (Budget Bill: Part HH) (as amended by Part V of Chapter 55 of the Laws of 2023) amends the RSSL to waive §§ 211 & 212 approval and income limitations on retirees as a result of earnings from employment in public schools in the state. This will remain in effect from 04/09/22 and shall expire and be deemed repealed 06/30/24.**



Earning Limitations for Disability Retirees



NYC EMPLOYEES' RETIREMENT SYSTEM

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Tiers 1 and 2

Limits Before Attaining Service Retirement Age - Section 13-171 of the NYC Administrative Code provides that a disability retiree may receive income from employment in the **private** sector or the **public** sector if they have not yet met the age requirement (or service requirement for retirees of a special plan which permits retirement without regard to age) under their retirement plan. The amount a retiree may earn is the difference between the maximum current salary of the next higher title from that which they retired, and the **maximum** pension portion of their retirement allowance.*

Limits After Attaining Service Retirement Age - Once a disability retiree attains the minimum age requirement (or service requirement for retirees of a special plan which permits retirement without regard to age) for their retirement plan, **Section 1117 of the NYC Charter** governs post-retirement public employment. Section 1117 provides that a retiree's pension must be suspended if their total pension and earned income from **the City, State or a municipality within New York State** exceeds \$1,800 in any year.** NYC Transit retirees are not subject to this limitation. **Income from Public Benefit Corporations or the private sector is exempt from the \$1,800 limitation in the NYC Charter.**

Tiers 3, 4 and 6

Disability retirees in Tier 3, 4, and 6 are generally subject to post-retirement earnings limitations. The extent to which these limitations apply depends on the specific law under which you retired. The following table shows the limitations under each law. If you do not know the disability law under which you retired, refer to the Retirement Resolution or data sheet which was given to you at retirement.

NYS Retirement & Social Security Law (RSSL) Section(s)	Earnings Limitations
Dual Purpose Disability Statutes for Tier 4 and Tier 6 Members, and Tier 3 Uniformed Corrections (605 & 507-a) Public & ***Private employment anywhere	\$34,200 for 2022 (will change annually based on the Consumer Price Index) Exceeding this earnings limitation will result in the suspension of your pension for 12 months
Accidental Disability for Tier 4 and Tier 6 Uniformed Sanitation (605-b)	Tiers 1 & 2 safeguards apply (See Tiers 1 & 2 section above)
Line-of-Duty Disability for Tier 3 Uniformed Corrections (507-c) Line-of-Duty Disability for Tier 4 and Tier 6 Emergency Medical Technicians (607-b) Accidental Disability for Tier 4 and Tier 6 Deputy Sheriffs (605-c) Tier 3 General Members and 22-Year Plan [506 (Ordinary), 507 (Accidental)] Public employment within NYS only	\$1,800 (including any pension earned) per Section 1117 of the NYC Charter
Line-of-Duty Disability for Tier 3 Uniformed Corrections (507-c) Line-of-Duty Disability for Tier 4 and Tier 6 Emergency Medical Technicians (607-b) Accidental Disability for Tier 4 and Tier 6 Deputy Sheriffs (605-c) Tier 3 General Members and 22-Year Plan [506 (Ordinary), 507 (Accidental)] ***Private employment anywhere & Public employment outside of NYS after attaining age 65.	NO LIMITATION Tier 3 General Members and 22-Year Plan [506 (Ordinary), 507 (Accidental)] Members: If you are under the age of 65, please see section below <i>Income Limitations Pursuant to RSSL §507(d)</i> .
TRANSIT RETIREES ONLY (Retired under RSSL §§ 506, 507, 605) Public & ***Private employment anywhere	NO LIMITATION

Income Limitations Pursuant to RSSL §507(d)

The income limitations specified in RSSL §507(d) apply to Tier 3 General Members and, CO-20, CF-20, CC-20, 22-Year Corrections, and 22-Year Corrections Enhanced Disability Benefit Members.

Pursuant to RSSL §507(d), even if a retiree's disability benefit from NYCERS is not based on a finding of disability from the Social Security Administration (SSA), the retiree is subject to the same income limitations as if they were a recipient of Social Security Disability benefits from the SSA. These income limitations are applied up until the retiree reaches age 65. The income limitations under RSSL §507(d) apply for Private employment anywhere & Public employment outside of NY State.

The income limitations for year 2022 are as follows:

Monthly substantial gainful activity amounts by disability type

Year	Blind	Not Blind
2022	\$2,260	\$1,350

If a retiree exceeds the income limitations in any given year up until attaining age 65, the retiree must be placed on a preferred list with the New York City Department of Citywide Administrative Services. The retiree's placement should be based on the positions the retiree is qualified for, in a salary grade not to exceed that from which the person retired. NYCERS will continue to pay the disability pension benefit until the retiree is picked up off a preferred list. Once the retiree is picked up off the list, NYCERS must cease paying the disability pension -- even if the retiree does not accept the position.

The income limitations specified in RSSL §507(d) apply to 22-Year Corrections and 22-Year Corrections Enhanced Disability Benefit Members who retire for accidental disability under §507 only after a medical examination takes place and a retiree is no longer found to be disabled.

*Exceeding earnings limitations under Section 13-171 will result in the suspension of your pension for the remainder of that calendar year.

**Since the pension and earned income are added together, most pensioners will exceed the \$1,800 income limit once they start working. The pension will remain suspended for as long as you continue to work.

***Employment with a Public Benefit Corporation in NYS is considered Private employment.

